

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : CR 03-1382(S-1)

:

-against- :

United States Courthouse  
Brooklyn, New York

VITO RIZZUTO, :

May 4, 2007

Defendant. : 11:00 o'clock a.m.

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TRANSCRIPT OF PLEADING  
BEFORE THE HONORABLE NICHOLAS G. GARAUFIS  
UNITED STATES DISTRICT JUDGE

APPEARANCES

For the Government:

ROSLYNN R. MAUSKOPF  
United States Attorney  
BY: GREGORY ANDRES  
Assistant United States Attorney  
One Pierrepont Plaza  
Brooklyn, New York

For the Defendant:

JOHN MITCHELL, ESQ.

Court Reporter:

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Proceedings recorded by mechanical stenography, transcript  
produced by computer-aided transcription.

1 THE CLERK: United States versus Rizzuto.

2 (Counsel present; appearances noted.)

3 THE COURT: Good morning.

4 Mr. Mitchell, I understand that your client wishes  
5 to withdraw his previously entered plea of not guilty to Count  
6 One of the indictment and to enter a plea of guilty to that  
7 count pursuant to a plea agreement.

8 MR. MITCHELL: That is correct, Your Honor.

9 THE COURT: Very well.

10 MR. ANDRES: Your Honor, before we get  
11 started -- I'm sorry to interrupt already.

12 Just one novelty, if you will.

13 THE COURT: A what?

14 MR. ANDRES: A novelty about this plea or -- it's  
15 certainly not the standard practice of the office to offer a  
16 plea under these terms so I just wanted to make that clear to  
17 Your Honor because one part of the plea requires that Your  
18 Honor accept the plea, and once you do, it binds all the  
19 parties. If Your Honor chooses not to accept the plea, unlike  
20 other cases, it wouldn't bind all of the parties.

21 What I am specifically referring to is  
22 Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure,  
23 so I just wanted to make that clear to Your Honor.

24 And to the extent that Your Honor is in a position  
25 to inform the parties as to whether or not the Court would be

1 prepared to accept the plea, provided the allocution is  
2 sufficient, I think that's something that might be helpful  
3 going forward so that we don't prejudice the defendant in any  
4 way, or were the Court not to decide to take the plea.

5 THE COURT: In other words, we wouldn't want to go  
6 through a procedure that was not going to result in the  
7 desired outcome.

8 MR. ANDRES: Correct. Namely, require the defendant  
9 to allocute to crimes that Your Honor wouldn't later accept  
10 the plea.

11 The rule itself requires -- says that if there is an  
12 agreement that a specific sentence or sentencing range is the  
13 appropriate disposition of the case, or that a particular  
14 provision of the Sentencing Guidelines, or policy statement,  
15 or sentencing factor is or does not apply, such a  
16 recommendation or request binds the Court once the Court  
17 accepts the plea.

18 In the case of Mr. Rizzuto, the agreed upon sentence  
19 is a sentence of ten years of imprisonment, and the other  
20 terms with respect to fine or whether those terms are defined  
21 or not are all articulated in the plea agreement.

22 One thing just to inform the Court, with respect to  
23 the proposed sentence of ten years, whereas in most cases in a  
24 RICO murder or murder that's charged as a predicate act in a  
25 RICO would require a life sentence, that's not true in this

1 case because of the dates. That is to say, that because the  
2 predicate acts and the murders in this case took place in  
3 1981, the statutory maximum sentence that Mr. Rizzuto could  
4 receive if convicted after trial would be 20 years and not  
5 life because the RICO law was not amended until the early  
6 nineties which allowed for that -- for it to be 20 years or  
7 life if the underlying predicate acts carried a term of  
8 20 years.

9 So in defining whether or not ten years is  
10 reasonable for these crimes, it's certainly something that the  
11 government takes into consideration what the maximum sentence  
12 would be, and in this case that's 20 years and not life.

13 There are other reasons to support the plea which I  
14 am happy to put on the record once the -- once we get to that  
15 stage, Your Honor.

16 MR. MITCHELL: I also would make the observation  
17 that he was extradited pursuant to an extradition request  
18 which capped the punishment at 20 years. So it would be  
19 20 years for both of those cases, for both of those reasons.

20 THE COURT: I understand.

21 What about the question of the victims' families?  
22 Have they been consulted about this?

23 MR. ANDRES: Your Honor, as Your Honor knows,  
24 these -- these cases, not this case in particular but  
25 certainly the cases relating to the murder of three captains

1 has been going on for sometime. Clearly, it was something  
2 that was charged and tried during the Basciano trial. We were  
3 in contact with the family members during that trial and the  
4 family members have been notified of today's proceedings and  
5 notified of the terms.

6 Whether they are actually given the opportunity to  
7 veto or comment directly, our obligation is primarily to  
8 inform them of the proceedings, and they have been notified  
9 and my understanding is that they would like to -- we made  
10 attempts -- we contacted the Giaccone family. We were unable  
11 to get -- contact all of the Trincheras, but we will certainly  
12 do that for the purposes of -- we made attempts to and we  
13 certainly will do that for the purposes of sentencing. They  
14 will have a right to speak at sentencing.

15 THE COURT: Well, I have reviewed the plea  
16 agreement. I understand the terms of the agreement.

17 Subject to hearing the allocution of the defendant,  
18 it is my intention, although I can't guarantee it at this  
19 moment, that I will accept the plea. But it is certainly my  
20 expectation that I will accept the defendant's plea of guilty  
21 pursuant to the terms of this plea agreement.

22 MR. MITCHELL: Yes, sir.

23 THE COURT: I believe I understand the reasons why  
24 this arrangement has been made, and I think that it is a  
25 prudent course of action for the parties and for the Court; of

1 course, subject to hearing from the defendant at the time of  
2 his allocution.

3 All right.

4 MR. MITCHELL: Yes, sir.

5 THE COURT: Okay. Mr. Rizzuto, your attorney  
6 advises that you wish to plead guilty to Count One of the  
7 indictment in which you are charged. This is a serious  
8 decision. I must be certain that you make it understanding  
9 your rights and the consequences of your plea. I am going to  
10 explain certain rights to you and then ask you questions. I  
11 want your answers to be under oath. The deputy clerk will  
12 swear you in.

13 (The defendant duly sworn.)

14 THE COURT: Mr. Rizzuto, you understand that having  
15 been sworn to tell the truth, you must do so. If you were to  
16 deliberately lie in response to any question that I ask you,  
17 you could face further criminal charges for perjury.

18 Do you understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: If I say anything that you do not  
21 understand, or if you need me to repeat anything, you have  
22 only to ask. It is important that you understand everything  
23 that goes on in these proceedings.

24 Is that clear?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Mr. Rizzuto, how old are you?

2 THE DEFENDANT: Sixty-one, Your Honor.

3 THE COURT: How far did you get with your education?

4 THE DEFENDANT: Ninth grade.

5 THE COURT: Where did you go to school?

6 THE DEFENDANT: I went to Catholic school in Canada.

7 THE COURT: Catholic school in Canada?

8 THE DEFENDANT: Yes.

9 THE COURT: Where in Canada?

10 THE DEFENDANT: Montreal.

11 THE COURT: Are you a Canadian citizen?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Is English your primary language?

14 THE DEFENDANT: I would say so, yes.

15 THE COURT: What other languages do you speak?

16 THE DEFENDANT: I speak four languages; Spanish,  
17 Italian, French.

18 THE COURT: Have you had any difficulty in  
19 communicating with your client in English, Mr. Mitchell?

20 MR. MITCHELL: None whatsoever, Your Honor.

21 THE COURT: Very well.

22 Mr. Rizzuto, I must be certain that whatever  
23 decision you make today you make with a clear head. So I am  
24 going to ask you some questions about your health.

25 Are you currently, or have you recently, been under

1 the care of a doctor or psychiatrist for any reason?

2 THE DEFENDANT: Doctor, yes.

3 THE COURT: For what?

4 THE DEFENDANT: They said they found a spot in my  
5 lungs but they haven't said what's up to now yet.

6 THE COURT: Have you been --

7 THE DEFENDANT: They have to give me a CAT scan but  
8 they say they will bring me to the hospital but they haven't  
9 yet.

10 THE COURT: When did they --

11 THE DEFENDANT: Two months ago.

12 THE COURT: How long?

13 THE DEFENDANT: Two months.

14 THE COURT: We will deal with that.

15 MR. ANDRES: Absolutely, Judge.

16 THE COURT: In the past 24 hours, have you taken any  
17 pills or drugs or medicine of any kind?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: In the past 24 hours, have you drunk any  
20 alcoholic beverages?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: Have you ever been hospitalized or  
23 treated for any drug related problem?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: Is your mind clear as you stand here



1 today?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Do you understand everything being said  
4 to you?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: All right. Mr. Mitchell, have you  
7 discussed the question of a guilty plea with your client?

8 MR. MITCHELL: Yes, sir.

9 THE COURT: In your view, does he understand the  
10 rights that he would be waiving by pleading guilty?

11 MR. MITCHELL: Yes, sir.

12 THE COURT: Do you have any question as to your  
13 client's competence to proceed today?

14 MR. MITCHELL: No, sir.

15 THE COURT: Are you retained?

16 MR. MITCHELL: Yes, sir.

17 THE COURT: Mr. Rizzuto, are you satisfied with the  
18 assistance that your attorney has given you thus far in this  
19 matter?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Is there any reason why you might want  
22 to have any further discussions with him before proceeding?

23 THE DEFENDANT: No reason.

24 THE COURT: Okay. You are pleading guilty to  
25 Count One of the indictment in which you are charged in

1 03 CR 1384(S-1). I am going to ask Mr. Andres to state the  
2 charge in Count One and to identify the elements of the crime  
3 that the government would be required to prove beyond a  
4 reasonable doubt to a unanimous jury if you were to go to  
5 trial in this case.

6 Mr. Andres?

7 MR. ANDRES: Your Honor, the defendant is charged  
8 with racketeering conspiracy, pursuant to Title 18, Title 18  
9 United States Code Section 1962, specifically Section D. The  
10 elements that the government would have to prove with respect  
11 to the racketeering conspiracy are:

12 First, that there is an enterprise, namely, the  
13 enterprise or association in fact that's alleged in the  
14 indictment, the government would have to prove that that in  
15 fact existed.

16 Secondly, that there was an interstate commerce,  
17 that is to say, that the enterprise affected interstate or  
18 foreign commerce.

19 Third, that the defendant was associated with or  
20 employed by that enterprise; in this case, conspired with the  
21 enterprise.

22 And fourth, that the defendant knowingly and  
23 intentionally agreed that either he or other employees or  
24 associates of the enterprise would commit a pattern of  
25 racketeering activity.

1 With respect to this indictment and this plea, the  
2 pattern of racketeering activity is defined by the  
3 racketeering acts to which the defendant is going to plead and  
4 those are Racketeering Acts 5-A, which is the conspiracy to  
5 murder Alphonse Sonny Red Indelicato, Philip Phil Lucky  
6 Giaccone, Dominick Big Trin Trinchera; 5-B, which is the  
7 murder of Alphonse Sonny Red Indelicato; Racketeering Act 6,  
8 which is the murder of Philip Phil Lucky Giaccone; and  
9 Racketeering Act 7, which is the murder of Dominick Trinchera,  
10 Big Trin.

11 Those particular crimes are charged under the  
12 provisions of New York State law for both murder and murder  
13 conspiracy. New York Penal Law Section 20.00 provides in  
14 relevant part, that:

15 When a person engages in conduct which constitutes  
16 an offense, another person is criminally liable for such  
17 offense when, acting with the mental culpability required for  
18 the commission thereof, he solicits, requests, commands,  
19 importunes, or intentionally aids such person to engage in  
20 such conduct.

21 The aiding and abetting provision of New York law is  
22 105.15. That provides in relevant part -- I'm sorry. This is  
23 the conspiracy, 105.15.

24 A person is guilty of conspiracy in the second  
25 degree when, with the intent that the conduct constituting a

1 Class A felony be performed, he agrees with one or more  
2 persons to engage in or cause performance of such conduct.

3 The murder provision, the second degree murder  
4 provision under New York State law is Section 125.25, which  
5 reads in relevant part:

6 A person is guilty of murder in the second degree  
7 when with the intent to cause the death of another person he  
8 causes the death of such person or a third person.

9 In order for the government to prove beyond a  
10 reasonable doubt to a jury that the defendant committed the  
11 New York State crime of conspiracy to commit murder, the  
12 government would have to prove the following elements beyond a  
13 reasonable doubt:

14 That two or more persons knowingly entered into a  
15 conspiratorial agreement with the intention to commit the  
16 murder charged.

17 That the defendant knowingly became a party to the  
18 conspiratorial agreement with the intent to commit the murder  
19 charged.

20 And, third, that one of the conspirators acted in  
21 furtherance of the agreement to commit the murder charged.

22 To prove a charge of second degree murder under  
23 New York Penal Law, it would be necessary for the government  
24 to prove beyond a reasonable doubt that the defendant intended  
25 to kill another person.

1 And, second, that in accordance with that intent the  
2 defendant caused the death of the individuals named.

3 THE COURT: All right. Mr. Rizzuto, do you  
4 understand the charge against you in Count One and the  
5 elements of the crime that the government would have to prove  
6 beyond a reasonable doubt to a jury at a trial if you were to  
7 go to trial in this case?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: All right. You have certain rights and  
10 I am going to discuss those rights with you now. Please  
11 listen carefully to your rights.

12 You have the right to plead not guilty to this  
13 charge. No one can be forced to plead guilty.

14 Do you understand that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: If you plead not guilty to this charge,  
17 or persist in a plea of not guilty, you have the right under  
18 the Constitution and laws of the United States to a speedy and  
19 public trial before a jury with the assistance of your  
20 attorney.

21 Do you understand?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: At any trial you would be presumed to be  
24 innocent. You would not have to prove that you were innocent.  
25 This is because under our system of laws, it is the government

1 that must come forward with proof that establishes beyond a  
2 reasonable doubt that you are guilty of the crime charged.

3 If the government failed to meet this burden of  
4 proof, the jury would have the duty to find you not guilty.

5 Do you understand that?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: In the course of a trial, witnesses for  
8 the government would have to come here to court and testify in  
9 your presence. Your attorney would have the right to  
10 cross-examine these witnesses. He could raise legal  
11 objections to evidence the government sought to offer against  
12 you. He could offer evidence in your behalf if you thought  
13 there was evidence that might help you in this case.

14 Do you understand that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: At a trial you would have the right to  
17 testify in your own behalf if you wished to do so. On the  
18 other hand, you could not be forced to be a witness at your  
19 trial. This is because under the Constitution and laws of the  
20 United States, no person can be compelled to be a witness  
21 against himself. If you wish to go to trial but chose not to  
22 testify, I would instruct the jury that they could not hold  
23 that against you.

24 Do you understand that?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: If instead of going to trial you plead  
2 guilty to the crime charged, and if I accept your guilty plea,  
3 you will be giving up your right to a trial and all the other  
4 rights I have just discussed. There will be no trial in this  
5 case as far as you are concerned. There will be no appeal on  
6 the question of whether you did or did not commit this crime.

7 The only thing you could appeal would be if you  
8 thought I did not properly follow the law in sentencing you.  
9 Otherwise, I will simply enter a judgment of guilty based upon  
10 your plea of guilty.

11 If you do plead guilty, I will have to ask you  
12 certain questions about what you did in order to convince  
13 myself that you are guilty of the charge. You will have to  
14 answer my questions and acknowledge your guilt. If you do so,  
15 you will be giving up your right not to incriminate yourself.

16 Do you understand that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: All right. Mr. Rizzuto, are you willing  
19 to give up your right to a trial and all the other rights I  
20 have just discussed with you?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: I have in front of me a plea agreement  
23 in United States against Vito Rizzuto, 03 CR 1382(S-1). It is  
24 marked as Court's exhibit number one. It is dated today,  
25 May 4, 2007. It consists of five pages. I am going to hand

1 it to the defendant and his attorney and ask some questions.

2 Mr. Rizzuto, have you read this document?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Have you discussed it with your  
5 attorney?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Has he answered any and all questions  
8 that you had about it?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: All right. Do you understand your  
11 rights and your obligations under this agreement?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: All right. Counsel, in your view, does  
14 your client understand his rights and obligations under this  
15 plea agreement?

16 MR. MITCHELL: Yes, sir.

17 We have thoroughly discussed the agreement.

18 THE COURT: Okay. Please turn to page five of the  
19 agreement, the last page.

20 Mr. Rizzuto, on page five of the agreement, is that  
21 your signature by your name?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Did you sign the agreement today?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Mr. Mitchell, you also executed the



1 agreement?

2 MR. MITCHELL: Yes, sir, I did.

3 THE COURT: And the government has done so as well?

4 MR. ANDRES: Yes, Judge.

5 THE COURT: All right. Please return the agreement  
6 to me.

7 Mr. Rizzuto, I have an important question to ask  
8 you. Is there any other agreement that has been made to get  
9 you to plead guilty that is not contained in this plea  
10 agreement?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: Very well.

13 I am going to go over the statutory penalties  
14 associated with this crime and the particular penalty that is  
15 articulated in paragraph two.

16 The statutory penalties for violation of  
17 18 U.S. Code 1962(d), which is racketeering conspiracy, are as  
18 follows:

19 There is no minimum term of imprisonment.

20 There is a maximum term of imprisonment of 20 years.

21 The maximum supervised release term is three years.  
22 That would follow any term of imprisonment. If a condition of  
23 release is violated, you could be sentenced up to one year of  
24 imprisonment without any credit for the time you have  
25 previously served in prison or the time you've previously

1 served on supervised release.

2 The maximum fine is \$250,000 or twice the gross  
3 profits of the enterprise.

4 There is a \$100 special assessment, which is  
5 mandatory.

6 Restitution will be determined by the Court and, in  
7 addition, you will be subject to removal or deportation from  
8 the United States. Since you fought extradition, I assume  
9 that that would not be a problem for you.

10 Do you understand the statutory penalties associated  
11 with this plea?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: All right. In addition, as has been  
14 pointed out by the government, that the parties agree that  
15 pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal  
16 Procedure, a specific sentence of ten years imprisonment,  
17 three years supervised release, and a \$100 special assessment,  
18 as well as any fine and restitution imposed consistent with  
19 the statutory penalties is an appropriate disposition of the  
20 case.

21 Is that your agreement?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Very well.

24 Inasmuch as the Court expects that, should your  
25 allocution be satisfactory, it will agree to the 11(c)(1)(C)

1 disposition, which has just been articulated, I don't think it  
2 is necessary for me to go over the issue of the sentencing  
3 guidelines. The issue has been resolved through the  
4 discussion of the statute and also the bargained for  
5 disposition.

6 Is that agreeable?

7 MR. ANDRES: Yes, Judge.

8 MR. MITCHELL: Yes, Judge, I agree with it.

9 THE COURT: Very well.

10 Sir, in the plea agreement letter, which is dated  
11 today, May 4, 2007, you have just told me you have discussed  
12 that with your attorney and which you signed today, there is  
13 an agreement regarding your right to appeal your sentence.  
14 The agreement letter says, and I want to make sure that you  
15 understand this, by signing this agreement you agree not to  
16 appeal or in any other way challenge the sentence that I  
17 impose upon you if it is 120 months or less, which is ten  
18 years.

19 If I were to sentence you to more than ten years,  
20 and you believed there was a legal or other error in my doing  
21 that, you would then have a right to appeal your sentence to  
22 the United States Court of Appeals for the Second Circuit.

23 Do you understand that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Do you understand that you have the

1 right to appeal only if I sentence you to more than ten years?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Do you understand that even if the  
4 sentence I give you -- well, I think it is very clear, that if  
5 I sentence you to the ten years you are going to be bound by  
6 your guilty plea and not permitted to withdraw it, and you  
7 will not be able to challenge or appeal that sentence, as long  
8 as the sentence is ten years or less, as we have discussed.

9 Do you understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Anything else?

12 MR. ANDRES: Only to the extent that ten years, more  
13 than ten years, as it relates to the term of imprisonment. If  
14 the sentence were to be ten years and some fine, that wouldn't  
15 constitute something that's more than ten years when you are  
16 defining that term or saying sentenced to more than ten years.  
17 I think it is clear to all the parties that that relates to  
18 the term of imprisonment.

19 THE COURT: Right. It's only that component of the  
20 sentence which is subject to the ten-year limitation.

21 MR. MITCHELL: We understand, Your Honor.

22 THE COURT: Do you understand that?

23 Do you understand that, sir?

24 THE DEFENDANT: Yes.

25 THE COURT: All right.

1 Do you have any questions you would like to ask me  
2 about the charge, your rights or anything else related to this  
3 matter that may not be clear, Mr. Rizzuto?

4 THE DEFENDANT: No, Your Honor.

5 MR. MITCHELL: There is just one matter, Your Honor.

6 THE COURT: Okay.

7 MR. MITCHELL: As the Court can see, later on in  
8 paragraph three at page three, there is a discussion about  
9 waiver of defenses. I just want to make the record clear -- I  
10 just want the record to be clear, that it is our position and  
11 our understanding of this agreement that in the event that for  
12 some reason, and I don't foresee any, that the plea would be  
13 set aside or vacated, that Mr. Rizzuto would not waive any  
14 defenses that existed at the time that he took the plea.

15 So, for example, if he had a viable Statute of  
16 Limitations defense today, that if he pled -- by pleading  
17 guilty, and if in the event somehow the plea was vacated, he  
18 would not waive that Statute of Limitations defense. He would  
19 be returned, if you will, to status quo at the time he took  
20 the plea.

21 MR. ANDRES: Your Honor, I believe that to be the  
22 appropriate interpretation of this provision.

23 Just to be clear, we are not making some additional  
24 promise or anything that's outside the purposes of the  
25 agreement. But when read, the purpose -- that provision of

1 the plea agreement, the purpose of it is not to generate a new  
2 Statute of Limitations defense for somebody. For instance, if  
3 Mr. Rizzuto were to plead guilty today, ten years from now he  
4 can't say, or argue, I want my plea back and then, to the  
5 extent he got it, have created a Statute of Limitations  
6 problem, Statute of Limitations defense by waiting ten years  
7 and asking for his plea back.

8 I think what Mr. Mitchell is saying is that he  
9 believes as of today, today Mr. Rizzuto would have at least  
10 some plausible, or at least could make an argument in favor of  
11 the Statute of Limitations and that he is asking that that not  
12 be waived and, again, that's my understanding of the -- of the  
13 purpose of this agreement, if that satisfies the Court.

14 THE COURT: It will be waived if this plea is  
15 accepted and the sentence is executed.

16 MR. MITCHELL: I understand, Your Honor.

17 All I am saying, in the event that for some reason  
18 the plea would be vacated, he would just be returned to status  
19 quo before the plea in terms of whatever defenses he might  
20 have. I think we all agree on it.

21 THE COURT: I think we all agree on it.

22 MR. MITCHELL: Yes, sir.

23 THE COURT: That's fine.

24 MR. MITCHELL: The one other inducement, if you  
25 will, Your Honor, is that the government has agreed that they

1 would not object to our requesting the Court that the Court  
2 recommend to the Bureau of Prisons that Mr. Rizzuto would be  
3 incarcerated at the facility in Ray Brook, New York. That's  
4 the closest facility.

5 THE COURT: Where is Ray Brook?

6 MR. MITCHELL: It's up near Lake Placid, I think.  
7 It is the closest facility to his home, Your Honor.

8 THE COURT: In Montreal?

9 MR. MITCHELL: Yes, sir.

10 THE COURT: I am familiar with the area. I  
11 understand why you would want that.

12 MR. ANDRES: Obviously, subject to any -- we and the  
13 Court, to any designation or what have you by the BOP, we  
14 obviously have no objection.

15 MR. MITCHELL: The Court recommends, I understand.

16 THE COURT: The Court cannot require it.

17 MR. MITCHELL: I understand.

18 THE COURT: The Court can recommend it and, frankly,  
19 I would certainly recommend that he be, and that any defendant  
20 who pleads guilty or who is found guilty by a jury, be  
21 designated to an appropriate facility as close to his family  
22 as possible.

23 MR. MITCHELL: Yes, sir.

24 THE COURT: Okay.

25 MR. MITCHELL: Thank you.

1 THE COURT: All right. Mr. Mitchell, is there  
2 anything that you would like me to discuss with your client in  
3 further detail before I proceed to formal allocution?

4 MR. MITCHELL: No, sir.

5 THE COURT: All right. Do you know of any reason  
6 why your client should not enter a plea of guilty to the  
7 charge?

8 MR. MITCHELL: No, sir.

9 THE COURT: Are you aware of any viable legal  
10 defense to the charge?

11 MR. MITCHELL: No, sir.

12 THE COURT: All right. Mr. Rizzuto, are you ready  
13 to plead?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Okay. Mr. Rizzuto, how do you plead to  
16 the charge contained in Count One of the superseding  
17 indictment (S-1), guilty or not guilty?

18 THE DEFENDANT: Guilty.

19 THE COURT: Are you making this plea of guilty  
20 voluntarily and of your own free will?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Has anyone threatened or forced you to  
23 plead guilty?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: Other than the agreement with the



1 government, has anyone made you any promise that caused you to  
2 plead guilty?

3 THE DEFENDANT: No, Your Honor.

4 THE COURT: Other than the agreement with the  
5 government, has anyone made you any promise about the sentence  
6 you will receive?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Very well.

9 I would like you at this time to describe, in your  
10 own words, what you did to commit the crime set forth in Count  
11 One of the indictment.

12 I see that you are planning to read. Please read  
13 your allocution slowly --

14 THE DEFENDANT: Yes, sir.

15 THE COURT: -- for us. Okay?

16 Go ahead.

17 THE DEFENDANT: Between February 1, 1981 and  
18 May 5, 1981, I conspired with others to conduct the affairs of  
19 an association in fact enterprise through a pattern of  
20 racketeering activity. Specifically, on May 5, 1981, acting  
21 with others in Brooklyn, New York, I committed the  
22 racketeering acts of conspiracy to murder and the murder of  
23 Alphonse Indelicato, Philip Giaccone and Dominick Trinchera.

24 MR. ANDRES: Judge, just to fill that out a little.

25 THE COURT: That would be helpful.

1           MR. ANDRES: The association in fact is the  
2 association in fact charged in the indictment, which is the  
3 Bonanno-Massino Organized Crime Family, La Cosa Nostra.

4           The government would prove through the testimony of  
5 cooperating witnesses, law enforcement witnesses, surveillance  
6 evidence, forensic evidence, including the recent recovery of  
7 the bodies of Dominick Trinchera and Philip Giaccone some two  
8 to three years ago now, in Queens, as well as the recovery of  
9 the body of Alphonse Indelicato, which happened approximately  
10 a month after his murder, that 26 years and one day ago from  
11 today, Mr. Rizzuto was involved in the murder of these three  
12 men, the three captains, as you've heard: Dominick Trinchera,  
13 otherwise known as Big Trin; Philip Giaccone, Phil Lucky; and  
14 Sonny Red Indelicato.

15           Your Honor is actually very aware of the evidence as  
16 it pertains to these murders because, again, we have tried the  
17 Massino case in which that was at issue.

18           Beyond that, Judge, we'd also prove that since that  
19 time, Mr. Rizzuto has maintained an association, continued to  
20 conspire with the Bonnano Organized Crime Family, and we would  
21 in fact prove that he was a member of that enterprise.

22           THE COURT: You are asking me to sentence this  
23 defendant to a specific sentence which is ten years less than  
24 the maximum. You haven't told me anything about what he did.  
25 He's admitting he did something. I've got all these

1 defendants in this case who have admitted or have been found  
2 guilty of being involved in these murders. Yet, I am just  
3 being told he was involved.

4 Why should I accept a plea to a specific sentence if  
5 I don't know what he did? I don't think it is enough,  
6 frankly.

7 So tell me what he did. Do you know what he did?  
8 You have witnesses who are going to testify to what his role  
9 was in these murders?

10 MR. ANDRES: Judge, absolutely.

11 I don't know if you want that from the government or  
12 from the defense.

13 THE COURT: I want it from the defendant. What did  
14 he do?

15 MR. MITCHELL: Your Honor, the defendant has already  
16 stated in his allocution that he committed the racketeering  
17 acts. In fact, that he conspired to murder these individuals;  
18 and beyond that, that he did participate in the murder of  
19 those individuals.

20 THE COURT: That's fine. That is as far as it goes.  
21 I am being asked to sign on to an agreement that I  
22 don't have the obligation to sign on to. Do I?

23 MR. MITCHELL: No, sir.

24 THE COURT: Then I want to know more about it. This  
25 is not some game. I am the judge. It is unacceptable.

1 Was he the driver? Was he one of the shooters?

2 I sat here for weeks listening to people tell me  
3 about these murders. I still don't know what his role was.  
4 Why should I accept his plea and accept a ten-year sentence  
5 when he could be sentenced to 20 years? People have gone to  
6 jail for the rest of their lives, as a practical matter,  
7 because of their involvement in these crimes.

8 If he's got something more to tell me, I'd like to  
9 hear it before I accept this plea.

10 MR. MITCHELL: May I have a moment, Your Honor?

11 THE COURT: Yes.

12 (Pause.)

13 MR. ANDRES: Your Honor, to the extent that we could  
14 just take a brief adjournment?

15 THE COURT: That's fine.

16 MR. ANDRES: We don't object to that.

17 THE COURT: I will give you ten minutes.

18 MR. ANDRES: Thank you, Judge.

19 (Recess taken.)

20 THE CLERK: United States versus Rizzuto.

21 THE COURT: All right.

22 MR. MITCHELL: Your Honor, what the defendant would  
23 tell the Court is that what happened on that day is that he  
24 was there. He was armed with a gun. He went in to the room  
25 and he announced that there was a holdup, and at that time the

1 other coconspirators came in and shot the individuals.

2 THE COURT: All right. Let him tell the Court.

3 THE DEFENDANT: That's it, Your Honor; exactly what  
4 Mr. Mitchell says.

5 THE COURT: All right. So what happened?

6 THE DEFENDANT: Well, I was one of the guys who was  
7 to participate in this. My job was to say, "It's a hold up,"  
8 when I went in the room. "So everybody stand still." This  
9 moment the other people came in and they started shooting the  
10 other guys.

11 THE COURT: You were armed?

12 THE DEFENDANT: I was armed.

13 THE COURT: All right.

14 MR. ANDRES: Your Honor, just, again, I  
15 don't -- it's certainly -- in the government's view, that's  
16 more than sufficient for the purposes of an allocution.  
17 Whether or not that's something that we -- the actual proof  
18 would be at trial or not, but there is clearly --

19 THE COURT: It is his allocution, not yours.

20 MR. ANDRES: I understand.

21 But that the government would prove that Mr. Rizzuto  
22 was in with a gun, with other people who were armed for the  
23 purpose of killing the individuals, the three captains.

24 THE COURT: I think that's what he's just allocuted.  
25 Isn't that right, sir?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Yes.

3 MR. ANDRES: Yes. Thank you, Judge.

4 THE COURT: Let me just point out, and Mr. Andres  
5 knows this, and it is no reflection on any of the counsel  
6 here, but I am very reluctant to take pleas under 11(c)(1)(C).  
7 I have told Mr. Andres that on a number of occasions. That's  
8 why I require that there be a fulsome allocution at the time  
9 so that at the time that I accept the plea, and therefore  
10 accept the bargained for sentence, I feel that there is a  
11 sufficient record to justify accepting a plea under those  
12 circumstances.

13 Do you understand that, Mr. Mitchell?

14 MR. MITCHELL: I do, Your Honor.

15 THE COURT: Okay.

16 MR. ANDRES: Judge, just for the record, I am  
17 certainly aware of that. There have only been two such pleas  
18 in the more than a hundred people that have been charged in  
19 the related Bonnano cases.

20 THE COURT: I know. That's because I told you I  
21 didn't want to take those pleas.

22 MR. ANDRES: I understand.

23 Given this crime happened over 26 years ago, given  
24 that it gives some finality in part to the victims, it allows  
25 us to return some of the evidence at least to some of the

1 victims, and given the time passage, while that's no excuse,  
2 it's certainly one of the things that factors into the  
3 government's calculation as to how to dispose of the case.

4 THE COURT: I agree completely with the government's  
5 reasoning in doing so in this situation. I simply require  
6 more information before I make the final determination as to  
7 whether to accept an 11(c)(1)(C) plea. I think the government  
8 has done the right thing here in terms of proffering this  
9 agreement, and I have no difficulty in accepting the plea, now  
10 that I have a complete allocution.

11 All right.

12 MR. MITCHELL: Very well.

13 MR. ANDRES: Thank you, Judge.

14 THE COURT: Based on the information you have given  
15 me, Mr. Rizzuto, I find that you are acting voluntarily, that  
16 you fully understand the charge, your rights and the  
17 consequences of your plea. There is, moreover, a factual  
18 basis for your plea. I therefore accept your plea of guilty  
19 to Count One of the indictment pursuant to the plea agreement,  
20 and specifically paragraph two of the plea agreement that  
21 requires me to sentence you to a specific sentence of ten  
22 years of imprisonment.

23 All right.

24 MR. MITCHELL: Very well.

25 MR. ANDRES: Your Honor, if we could ask for an

1 expedited PSR in this case? This case has been -- Mr. Rizzuto  
2 was indicted in 2004. All of the issues with respect to the  
3 conduct have already been resolved in past PSRs. The  
4 sentencing issues have been resolved as a result of the  
5 agreement. So what remains obviously is the interview of the  
6 defendant and some investigation with respect to financial  
7 issues and his family. But we would ask that this be  
8 expedited to the extent possible and that we set a quicker  
9 sentencing date.

10 That absolutely, obviously, would also facilitate  
11 any medical treatment that Mr. Rizzuto needed because I think  
12 the care tends to be more thorough, that is, the Bureau of  
13 Prisons has the ability to treat its inmates more thoroughly  
14 outside of the Metropolitan Detention Center.

15 MR. MITCHELL: We would join in that application,  
16 Your Honor.

17 THE COURT: That's fine.

18 The only question is, how expeditiously do you think  
19 the Probation Department can prepare such a report, which I  
20 think for the most part is prepared as to the overall  
21 activities that are charged in the indictment, since there are  
22 dozens and dozens of defendants on that indictment.

23 MR. ANDRES: Your Honor, if we could shoot for  
24 May 25th, I'll contact the Probation today. And to the extent  
25 that this doesn't work, obviously, we will go from there. But



1 at least that gives us a target date, if that's acceptable to  
2 you.

3 MR. MITCHELL: That's acceptable to the defense.

4 THE COURT: Yes. May 25th, at 10:00 am. That's the  
5 day before the Memorial Day holiday so we will do it in the  
6 morning.

7 MR. MITCHELL: Very well, sir.

8 THE COURT: Please ask the Probation Department to  
9 make every effort.

10 Mr. Rizzuto, you will be contacted by a Probation  
11 Officer, hopefully very, very soon, in connection with an  
12 interview. Mr. Mitchell will want to be present for the  
13 interview. Please provide the information that the Probation  
14 Officer needs to complete a presentence investigation report.

15 The report will be provided to you and your  
16 attorney. You will have an opportunity to review it. If  
17 there is anything in the report that is in error, or if there  
18 is anything about the report that leaves out some important  
19 element of your background that would help me as to those  
20 portions of the sentencing that I still have some control  
21 over, then your attorney will provide that information to me,  
22 to the government and to the Probation Officer.

23 I review everything very carefully, as sentencing is  
24 my most important responsibility.

25 MR. ANDRES: Judge, with respect to any outstanding

1 medical issues or treatment, to try to facilitate for  
2 Mr. Rizzuto, I am happy to contact the Bureau of Prisons.  
3 It's a little hard for me if I don't know what the specific  
4 issues are.

5 I would just ask that if Mr. Mitchell could write me  
6 a letter, makes it easier for me to then forward that to the  
7 Bureau of Prisons in the absence of some judicial intervention  
8 prior to that happening, and then obviously they can reserve  
9 the right to come back to the Court if the results aren't  
10 satisfactory.

11 THE COURT: I would like you to do that,  
12 Mr. Mitchell. Provide a letter to the government, with a copy  
13 to the Court.

14 Based on what Mr. Rizzuto has told me, apparently  
15 there has been some identification of a spot on his lung and  
16 he needs a CAT scan to further delineate what the problem is,  
17 if it is a problem that needs some sort of surgical  
18 intervention or not, or medical intervention. The sooner he  
19 gets that particular test the better. So whatever can be  
20 done, at least in the first instance, to get him the CAT scan  
21 while he is here in the center of the medical excellence of  
22 the world, before he goes to the country, wherever that may  
23 be, and it is harder for him to get that kind of attention,  
24 from tertiary providers, the better. Let's get it done.

25 MR. MITCHELL: Thank you, Judge.

1 MR. ANDRES: Thank you.

2 THE COURT: Anything else from the government?

3 MR. ANDRES: No, Judge.

4 THE COURT: Anything else from the defense?

5 MR. MITCHELL: No.

6 THE COURT: Thank you. Have a nice day.

7 Thank you, marshals.

8 (Matter concludes.)

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